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In reply to the writer's last pamphlet on this subject, Mr. Binney, a *Philadelphia* writer, quotes the following passages therefrom:

"There is a short process by which to eviscerate the very *gist* of the question, which seems not yet to have been applied, simple and obvious as is that process. Let us suppose the Constitution wholly silent on the subject, saying not one word about the Writ or its suspension, where then would have been the power to suspend? No intelligent, candid man will pretend that it would not be clearly, indisputably, with Congress, or that by any possible, fair construction the power could be assigned to the President.

"This conceded, then let it be remembered that the clause is a restrictive and not an enabling one. Without the restriction Congress would have plenary power, untrameled discretion over the Writ. It could have created the Writ, or not, at its pleasure, suspended or wholly repealed it out of existence whenever and as often as it thought proper.

"Here, then, this full power, this full discretion over the Writ, was what had to be restrained to accomplish the plain purpose of the clause; that is, placing the citizen's privilege of using the protection of the Writ upon a surer, more permanent basis than it stood in England, where it rests on the untrammeled discretion of Parliament. Who, then, was intended to be restrained by this clause? Surely not the President, who, under such silence of the Constitution, would have had no possible control over the Writ in any circumstances whatever. There could be no necessity to

restrain his power when he would have none to be restrained. Full surely it must have been intended to restrain Congress, which alone, and exclusively, would have the power."

Upon this, Mr. Binney comments thus: "This objection is both pertinent and important. It was not overlooked in the preceding Tract (his first pamphlet), but left for assertion and proof. If it is sound it materially disables the argument which regards the Habeas Corpus clause as a grant of authority. The objection is an affirmative one, and puts upon the writer who makes it the duty of proving it. The objection is not proved at all." That is, the assertion that in the supposed silence of the Constitution Congress would have had full power is assumed, not proven. This criticism is just. It was not proved because it was presumed to need no proof, and would not be denied by any lawyer—least of all by Mr. Binney, who had magnified the necessity for a power in the government to make the suspension.

Having sufficiently rebuked the present writer for assuming instead of proving the proposition, he *ex-gratia* condescends to its disproof. In his attempt at this he makes the following most surprising affirmations: "The Constitution gives no such power to Congress as *a power to regulate the courts.*"—"The judicial power of the United States does not depend *at all* upon the discretion or regulating power of Congress."—"The appellate jurisdiction of the Supreme Court is the only subject to which the power of regulation by Congress applies."

These strange affirmations are apparently based mainly upon the fact, that the Constitution does not use the word *regulate* in conferring the Congressional power over the courts, and that their *jurisdiction* being prescribed by the Constitution, it can neither be enlarged or curtailed by Congress. Such rash deduction, from such premises, was perhaps never before made by a man of such intelligence.

"*Congress shall have power to constitute tribunals inferior to the Supreme Court.*" "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as Congress *may from time to time order and establish.*"

These brief words cover the whole subject. Their elucidation

depend upon the meaning of "to constitute a tribunal," and of to "establish a court." That meaning cannot be better explained than as done by Mr. Binney. He says:

"It clearly can mean nothing else, than to erect judicial tribunals or courts, and to give them such constitution and organization as will *enable* them to exercise the judicial powers vested in them. The mere erection of a tribunal by name is nothing. The erection of a court, and vesting jurisdiction and judicial power in it, would be nothing without more. A judicial tribunal is not constituted unless it is endowed with the active powers which are necessary to the exercise of its judicial powers. It must have the means of bringing parties before it, and to enforce its judgments and decrees. It must have the power of issuing writs, of committing its mandates to officers to be executed, in just such kind, number, and variety as its judicial powers demand."

All this he admits Congress has the power, and contends, furthermore, that it is its imperative duty to do. Yet he carps at the expression used by Governor Randolph, "the power given to Congress to *regulate* the courts," as "indefinite language," not warranted by the Constitution, it not having used that very word *regulate*, though by this, his own showing, it has used its perfect equivalent. By that showing, the power to "constitute tribunals" carries with it as ample power to regulate them as if the word had been used, and the clause had read to "constitute and regulate tribunals." In addition, Mr. Binney well knows it to have been always held by the Supreme Court, that the inferior courts can exercise no power except such as is given them by Congress.

Judge Story says, 3 Comm. 254: "But the same reason did not apply to the inferior tribunals. These were therefore left *entirely to the discretion* of Congress as to their number, their jurisdiction, and their powers. Experience might and probably would show good grounds for varying and modifying them from time to time. It would not only have been unwise, but exceedingly inconvenient, to have fixed the management of these courts in the Constitution itself, since Congress would have been disabled thereby from adopting them from time to time to the exigencies of the country." In Turner *vs.* Bank, 4 Dal's 8, the Supreme Court said, that the

disposal of the judicial power, except in a few specified cases, belongs to Congress. Again, in U. S. *vs.* Hudson, 7 Cranch 32, the Court said as to the inferior courts that they "possessed no jurisdiction but what was given them by the power that created them," that is by Congress.

All this being well-known to him, it is marvelous how Mr. Binney could make the unqualified assertion that "the Constitution *gives no such power* to Congress as *a power to regulate the courts.*" An ill-natured critic would hold him to these words and punish him with their iteration. But that being no part of the present purpose, he having said words in this new pamphlet entitling him to lenient treatment, notwithstanding his defection from conservatism, it will be confessed that most probably the words do not convey his real meaning. What he meant was that an unstinted power to *regulate* does not, as he afterwards more distinctly contends, carry with it the power to destroy the courts and their powers. What he ought to have meant, but which he probably did not, was that the *power* did not carry with it the *right* to destroy—about which he will be talked with further along. The stalwart blows he gives in defense of the spirit against the strict letter of the Constitution and in vindication of civil liberty, whilst making his chivalrous attempt to prove that without the Habeas Corpus clause Congress would have had no power to suspend the Writ, are worthy of those palmy days when no suspicion of defection from the great cause of conservatism had ever soiled him. If he can do so well in favor of the spirit against the letter, we cannot but sigh after those ponderous blows he would deal in defense of both letter and the spirit plainly combined. We cannot help a regretful feeling at the absence of that aid to which we are so clearly entitled.

If the writer had any disposition that way he would be estopped by his own words from gainsaying Mr. Binney as to the dutiful obedience which should be yielded to the spirit of the Constitution, even when not expressed in direct language. In his review of the argument of the President and Attorney General Bates, he said:

"The argument says that Congress has the power, not the right, at any time to repeal the act giving the courts power to issue the

Writ, but attempts no use of that fact in illustration of the President's assumed power; and therefore the matter needs no comment. But it may be well to say, that whilst this is true, it is equally true that such repeal would be a gross abuse of power, being contrary to the spirit and meaning of the Constitution, which are as much to be observed as its letter; for incontestably the Constitution contemplates that Congress shall always furnish the Writ for protection to citizens, except when in cases of rebellion or invasion it may think public safety requires a suspension of that protection. Every sound statesman and lawyer will agree that a wilful violation of the manifest spirit of the Constitution is morally as bad as an infraction of its plain letter."

The case of Martin *vs.* Hunter amounts to nothing more than affirmance of the otherwise sufficiently explicit mandate of the Constitution to vest the judicial power in the courts, which the Court says "Congress could not, *without a violation of its duty*, have refused to carry into operation." This does not in the least impugn the other decisions that the courts must wait the performance of this duty before they can exercise their constitutionally defined jurisdiction, nor does it militate against the naked power, apart from the right, in Congress to violate the whole or any part of this duty. As said by Judge Story, it is an absolute power over the subject, unavoidably left to the discretion of Congress. Not whether the mandate should be obeyed, but as to the how and the when this discretion unavoidably accompanied the power, not the right, to disobey. The distinction between power and right is obvious to everyone, yet Mr. Binney intentionally, or unintentionally, so confounded them as to make it difficult to get at his precise meaning. For instance, he says Congress "cannot effectually omit to do what it is commanded to do by the Constitution;" and yet immediately afterwards he says, "it may omit to do the right thing, but it violates the command of its creator by so omitting, and brings on the destruction of its own being." What he means by the destruction of its own being is not understood. He surely does not mean that a temporary repeal of the writ of Habeas Corpus would necessarily involve that destruction.

This thing of the legislative department refusing or omitting to

obey a mandate of the Constitution is by no means a novelty in our system. According to the writer's recollection, the Supreme Court has detected more than one instance to prove that Congress has never yet enabled the courts to exercise the whole judicial power.

A notable instance of a failure of the Legislature to obey an express command of the Constitution occurred under the former Constitution of Kentucky, which expressly commanded the Legislature to provide for bringing suits against the Commonwealth, yet during the sixty years of its existence this command was never obeyed.

Suppose Congress omits this duty, where is the remedy? Who is to enforce the mandate—who to supply the omission? Disobedience to a command of the Constitution is wholly unlike, in this aspect, a violation of its prohibitions. For the latter there is remedy, through the other departments; for the former there is none. It is idle, therefore, to deny the mere abstract power, without reference to the right.

Mr. Binney says it is not an untrammeled power, because it is trammeled by the duty referred to. If he means morally trammeled, he is right; but, when we speak of an untrammeled congressional power, we mean one that has no available, effective legal trammel, and such is the power to regulate the courts.

The power has been so repeatedly exercised, with the express sanction of the Judiciary, and the undoubting approval of everybody else, that it is no longer open to denial. Whoever wants to limit the power for any available purpose must point out the express limitation in the Constitution. This Mr. Binney does not attempt to do, but contents himself with referring to certain abuses of the power which would be a violation of the spirit of the Constitution, the result of which being merely a moral censure on Congress, leaving such abuses to have full effect, without any legal check.

Sixty years ago Congress thought proper to repeal out of existence the whole then batch of inferior courts, and establish others in their place. Suppose this had been done by two different bills, and that, after passing the repealing bill, some casualty had, for months, prevented the passage of the other, the establishing bill :

that fact would not have impaired the legal validity of the repealing act. No judge would have been mad enough to attempt to exercise his repealed powers.

At the time of the abolition of imprisonment for debt, it was a prevalent opinion in the profession that there was no other sufficiently efficient remedy to enforce the payment of debts. Suppose that opinion to have been indisputably correct, would such gross abuse of power in leaving the courts without the proper remedial process upon so important a subject have invalidated the act repealing to *ca sa?* No court would have dared to use that or any equivalent process.

Notwithstanding his own scathing castigation of all such latitudinarians, Mr. Binney at least, it would seem, though others do not, deems an anonymous writer in the National Intelligencer, last summer, justifying the presidential usurpation, as some authority on a constitutional question. That writer, according to recollection, claimed the power of Congress to repeal the Writ out of existence, not merely in the absence of, but in despite the clause, and made that fact a main basis of his argument.

Mr. Binney attempts to bring to his aid what he deems a developed opinion of the members of the convention that the clause was an enabling, not a restrictive one. He says:

"When the vote in convention was taken, while upon the division of the clause, the delegates were unanimous in affirming the first member of it—'the privilege of the Writ of *Habeas Corpus* shall not be suspended.' The three States of North Carolina, South Carolina, and Georgia voted against the second member—'unless when in case of rebellion and invasion the public safety may require it.' Could they have voted against the latter clause under the impression that the general and unlimited power was already given to Congress? There is no rational interpretation of the vote but that the first member was declarative of a general prohibition of the power, and a confirmation of the general principles of *Magna Charta*, of the petition of right, and of all that had been previously declared, and that the second member *granted power* to the general government in the excepted cases."

Yes, there is another rational interpretation, and one much

more rational than his. That is, the three States wanted an unqualified, whilst the others wanted a qualified prohibition of the exercise of a power which they all knew that Congress would have over the Writ. If they did not so know, why the unanimous vote in favor of the first member of the clause, which is purely restrictive, and has nothing enabling about it? It could have had no purpose to restrain any supposable power in the President; for even Mr. Binney admits that without the whole clause, the enabling latter member, he would have had no power over the subject. They must have meant to restrain congressional power, for there was no other power to restrain. If the last part had been voted down the prohibition would have been unqualified. Now, then, this exposition of the views of the members by their votes, so far from subserving his purpose, operates in the directly opposite way. It is the strongest possible, most satisfactory proof so derivable, that they unanimously thought Congress would have the power unless prohibited.

The very language of the clause is, if possible, still stronger proof. If meant as a qualified prohibition, it is apposite and appropriate, whilst it is wholly inartificial and inappropriate as a grant of power. If a grant to the President had been intended, some such language as the following would have been required, and certainly used: "The President may suspend," &c., or he "may treat the privilege as suspended." When we find such different language used, it is irrational and illogical to contend that the clause is an enabling one, intended to give the power to the President.

Mr. Binney permits himself to say, "there is not a word like restriction or limitation in the first member of the clause," though it says "the privilege *shall not* be suspended." If this be not *restriction*, in the name of common sense, what is? If he means a quibble upon the slight difference in this respect between the meaning of restriction and prohibition, he contends for a distinction without a difference. The clause, viewed as a modified prohibition, is to all intents a qualified restriction. It equally presupposes a power somewhere, to be prohibited. There being no power anywhere to suspend any law, especially the law creating the Writ, except in Congress, the intention must have been to pro-

hibit Congress, which would be equally as full a recognition of the otherwise untrammeled power of Congress over the Writ. Either way, the argument of Mr. Binney is "materially damaged."

As to the idea that without the clause Congress would have no power, because of the absence of specific grant, to suspend the Writ, an old school Federalist must lose the cunning of his school before he can find any difficulty in proving the power to suspend to be an appropriate necessary and proper incident to the power to suppress insurrection or repel invasion. If the suspension of the right to freedom from arbitrary arrest, and all remedy for the violation of the right, be an inseparable or necessary accompaniment to such incidental power, he would gulp that also with a clear conscience.

Mr. Binney seems at last to be awakened to the recollection of the great importance of the Writ, and speaks of it as the "principal bulwark of liberty," "the great fundamental law of human liberty," "the inestimable right of personal liberty." Now, when, as everybody knows, and as the President and Attorney General distinctly admit, the Constitution was made in "special dread" of the executive power, it is contrary to every rational presumption to suppose an intention to make the President the custodian or special guard of that bulwark. To repel that presumption the language must be strong, unequivocal, which no one can pretend the clause to be, as a yielding of such power to the President. He reaffirms and reargues to prove the President to be the most suitable and trustworthy guardian of the sacred trust. The writer reaffirms his own position, that the President is the least suitable, the least trustworthy functionary of the whole government; but, instead of rearguing the matter, he will do vastly better, by adopting the language of Daniel Webster, than whom the country has produced no higher authority on constitutional questions. The following quotation is from that most perfect specimen of pure eloquence ever uttered in our language, his denunciation of the one man power:

"The spirit of liberty will not permit power to overstep its prescribed limits, though good intent, patriotic intent, come along with it. *This is the nature of constitutional liberty;* THIS IS OUR LIBERTY.

"The contest for ages has been *to rescue liberty from the grasp of executive power.* Whoever has engaged in her cause has struggled for the accomplishment of that object. On the long list of the champions of human freedom there is not one name dimmed by the reproach of advocating the extension of executive power. On the contrary, the uniform, steady purpose of all such champions has been to limit and to restrain it.

"Through all this contest for liberty, executive power has been regarded as a lion that must be caged. So far from being the object of enlightened popular trust, so far from being considered the natural protection of popular right, it has been dreaded as the great object of danger.

"Who is he so ignorant of the history of liberty, at home and abroad—who is he from whose bosom all infusion of American spirit has so entirely escaped—as to put into the mouth of the President the doctrine that the defense of liberty naturally results to executive power, and is its peculiar duty? Who is he that is generous and confiding towards power where it is most dangerous, and jealous only of those who can restrain it? Who is he that, reversing the order of State and upheaving the base, would poise the pyramid on its apex? Who is he that declares to us, through the President's lips, that the security for freedom rests in executive authority? Who is he that belies the blood and libels the fame of his ancestry by declaring that they have invoked executive power to the protection of liberty? Who is he that thus charges them with the insanity or recklessness of thus putting the lamb beneath the lion's paw? No, sir—no, sir; *our security is in our* watchfulness of executive power.

"I will not acquiesce in the reversal of all just ideas of government. I will not degrade the character of popular representation. I will not blindly confide where all experience admonishes to be jealous. *I will not trust executive power, vested in a single magistrate, to keep the vigils of liberty.*

"Encroachment must be resisted at every step. Whatever the consequence, if there be an illegal exercise of power it must be resisted in a proper manner. We are not to wait till great mischief comes—till the government is overthrown, or liberty itself

put in extreme danger. We should not be worthy sons of our fathers were we so to regard questions affecting freedom." *a*

The result thus far is, that the writer was accurately correct in assuming that without the *Habeas Corpus* clause Congress would have had plenary power, untrammeled discretion over the Writ. Mr. Binney himself by this time will be sufficiently sorry that he ventured to call for the proof, and, to relieve him, its development will not be further prolonged, not forgetting, however, to remind him that, according to his concession, his argument is thereby "materially disabled."

To the emphatic denial by the writer of any *ex-officio* presidential power of arrest, and his reference to the unanswered challenge made by him months before "for the production of a single instance before the advent of President Lincoln of even an attempt by any President or Governor to exert the power of arrest, Mr.

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a. Henry Laurens, the Ambassador of the U. S. who was captured on his way to Holland and detained a prisoner in the tower of London for two years, kept a journal of his mission, which was published, and is to be found in a book the title of which is, perhaps, "South Carolina State Papers." The writer has not seen the book, but states from the information of a gentleman who has recently read it.

Laurens says that after his release from prison the English officials treated him with great courtesy. At the table of Lord Shelburne, the then Premier, he was the honored guest among a large company of magnates. After dinner, the conversation turning upon the separation of the two countries, Lord Shelburne remarked to him, "I am sorry for your people." "Why so?" asked Laurens. "They will lose the Habeas Corpus." "Lose the Habeas Corpus!!" "Yes; we purchased it with centuries of wrangling, many years of fighting, and had it confirmed by at least fifty acts of Parliament. All this taught the nation its value, and it is so ingrained into their creed, as the very foundation of their liberty, that no man or party will ever dare trample on it. Your people will pick it up and attempt to use it, but having cost them nothing they will not know how to appreciate it. At the first great internal feud that you have, the majority will trample upon it, and the people will permit it to be done, and so will go your liberty."

All history affords no higher evidence of sagacity, and no statesman's prophecy eighty years in advance was ever nigher complete fulfillment than by the daily transpiring acts around us.

Binney contents himself with responding: "The Louisville writer touched this point with only a short denial, without any attempt to prove the President's general incapacity to issue a warrant of arrest. * * * If the clause intended to give him the power of suspension, the means necessarily follow, if they did not exist before." Not so fast, Mr. Binney; you cannot be permitted to slide over a difficulty quite so easy as that. The Constitution explicitly gives the courts the judicial power of the nation; yet they themselves have uniformly held that the means to carry out the power did not necessarily follow, but they were dependent upon such as Congress might choose to give. So also as to the President; he has no auxiliary or incidental power, but is dependent upon Congress for the grant of such means not expressly given as are necessary to carry out his constitutional power. This being, therefore, no proof, and he offering no other, the inference is that he is without proof to maintain the President's power of arrest. The consequence is, that if validity were allowed to his novel crotchet as to the presidential power of suspension, it would amount to nothing, would not be worth contending for, he had just as well be compelled to wait for a congressional suspension.

The inference is that Mr. Binney thinks the President has no *ex-officio* power of arrest, or he would have tried to prove it, and not have resorted to such fallible, make-shift argument. He must know that the fact of the want of such power is very damaging to his main argument. For how would the matter thus stand? The Convention, knowing that he had no power of arrest, and that all incidental or auxiliary powers were confined to Congress, Mr. Binney's construction would convict them of the bungling folly of attempting without actually conferring the power of suspension, an arrest, according to him, being the only mode of suspension. The fact of suspension requiring an arrest before it could occur, the Convention would have conferred the suspending power upon some department having the power of arrest, or have expressly conferred that power on the President, in plain words, and not left it to be discovered for the first time seventy years after the Constitution was made, and require the discovery to be maintained by one of the most subtle arguments ever penned. If Mr. Binney

had not fortunately lived till now the discovery never would have been made.

Mr. Bullitt having produced in his instructive and very able pamphlet such a long roll of eminent judges, lawyers, and statesmen, including such names as Marshall and Story, who have expressly held the suspending power to be in Congress, justifies the belief that the roll, if completed, would amount to more than a hundred, whilst there are none, not one to the contrary. These opinions, repeated without contradiction from the birth of the Constitution steadily on down to the present day, amount to a fixed, settled construction, fully as authoritative as an express decision of the Supreme Court. The position of the President and Attorney General not having been indorsed by a single respectable lawyer, notwithstanding the daily proof that "thrift follows fawning," and Mr. Binney's construction, notwithstanding the great ability of its defense, having so signally failed of acceptance, it would seem to be the duty of all to acquiesce in the old, original construction of seventy years duration, as the only true one.

In answer to the writer's suggestion that Congress could give all needful power during a suspension to officers appointed by the courts without conferring any of it upon the President, Mr. Binney says: "It is preposterous to suppose that somebody, not the President, may be selected by Congress to execute the power." The proof he gives is this: "The doctrine that Congress can in any event choose another executive when the President is in office is revolutionary." If intended as a slap at his Representative, Stephens, who claims the power to appoint a dictator, it is well enough; but if he means that the conferring such power on inferior officers appointed by the courts, then his reason is ludicrously "preposterous." The Constitution having said—"Congress may vest the appointment of such inferior officers as *they think proper* in the courts"—and not having restricted the powers to be conferred on such officers, nothing can be more ridiculously preposterous than that the exercise of such plain power for such purpose is "revolutionary," or that it is equivalent to choosing

another President. All that is required to effect the objects of suspension is some enlargement of the powers of arrest and detention, with which, ordinarily, the President has nothing to do. They appropriately belong to the judicial department. Yet such is his jealous affection for executive power that he cries out against so small an enlargement of the appropriate power of the judicial department as "revolutionary," as equivalent to choosing another President. It might well happen that a President will be, if not in league, in strong sympathy with a rebellion, and, therefore, not fit to be trusted with the powers necessary during a suspension. To deprive Congress in such a state of case of all right to select any other as the recipient of the trust would be a suicidal emasculation of the Government.

This means of depleting the overgrown, enormous patronage of the executive should have been resorted to long ago. There is now a pressing need for its immediate application in the mode of appointing the collectors under the enormous tax bill. The appointment of officers to money trusts should never, when avoidable, be left to political party influence, experience having shown that most of those appointed under that influence become defaulters. The appointment of the collectors should be vested in the District Courts, as also that of their supervisors, to whom the collectors should be required to report twice, and with whom to make a settlement once a month, subject to the revision of the Auditor of the Treasury. This arrangement, with power in the District Courts promptly to enforce the requisitions of the supervisors, would probably save many millions to the nation. It would also relieve the overburthened President from an irksome duty, which no one knows better than himself it is impossible for him to perform in a manner satisfactory to himself or beneficial to the nation.

Before taking final leave of Mr. Binney, he is entitled to thanks from the conservatives, which the writer will take upon himself to pay in their behalf. He says: "The scope of the Constitution is to *protect, defend, and secure the blessings of liberty, universally and without exception*, unless an exception is declared in the in-

strument." "The power *ultimæ necessitatis* does not exist in this limited government." These noble words deserve to be inscribed in letters of gold on the Capitol, and on every conservative banner in the next campaign against the destructives. They are words that desponding patriots have long impatiently listened for from him. Let him still wear his proud plume as "head of the American bar." Let not his "flushed covey" attempt to pluck a down from that plume. Let his crotchet about the suspending power pass into oblivion. Let this be no part of his otherwise beautiful biography. Let it not mar his enviably clean epitaph. So long as he adheres to those noble words he is still worthy to lead our profession when doing its *devoir* against the higher-law men, the law-of-necessity men, the paramount-law-of-war men, and in defending the Constitution against the traitorous war now waged by fanatics for its destruction. He will aid us whilst teaching the nation, in his own language, that "the *Habeas Corpus* is the principal bulwark of liberty," "the great fundamental law of human liberty," and also in teaching the value of "the inestimable right of personal liberty." He will aid us in reminding the nation, in the choice language of the recent incomparable speech of Mr. Thomas, of Massachusetts, that "THE CONSTITUTION ITSELF IS THE SALUS POPULI, AS IT IS ALSO THE SUPREMA LEX."

Mr. Binney is also entitled to thanks for having "flushed and put upon the wing the covey of reviewers from the Philadelphia bar," which very able covey, it is hoped, have enlisted for the war, and will give the country many other manifestations of such decided ability. It has been the proud boast of the profession, both in England and in this country, that in every contest for liberty it has always led the van, whether in assault or defense. Before folding their wings and settling back into that apathy from which it seemed so difficult to arouse them, will they not do what they can to make that vaunt good in this hour of liberty's utmost need? Will they not aid in arousing the profession throughout the country? Will they not take jurisdiction over that delinquent son of Pennsylvania, her most prominent Representative, and administer justice upon him? It is he who shamed her as much as if she had given birth to an Arnold, a Floyd, or a Twiggs, by being the first

native American base enough to immortalize his own infamy, by affirming in the councils of the nation, that Congress has power to appoint a dictator over this free country.

Surely the people of Pennsylvania will teach this man the penalty for thus shaming her. Surely they will tell him, that he is the only Pennsylvanian who does not feel and will not say with Shakspeare, "I had as lief not be as live to be in awe of such a thing as I myself," and who would not as "soon brook the eternal devil as a dictator" in this country.

A fanatic Senator had the unblushing effrontery the other day to boast in the Senate, that he was not to be tied by the Constitution, that he meant to usurp whatever power he chose to think necessary for carrying on the war. The meaning of which is, that he means to usurp whatever he deems necessary for the accomplishment of his fanatical purpose. This worst of all treason, this wilfully perjured treason against the Constitution, we shall have to arraign at the great bar of the nation, and obtain from the people a verdict of attainder against the traitors. To this traitor, the admirable Senator has already administered the following excellent rebuke:

"The great question before the world to be now settled by us is, can we sustain the integrity of our Government, and perpetuate our institutions, and do it according to the limitations and provisions of the Constitution? That is, to show that our Constitution is competent to the trial, and nothing short of that. If, when this occasion arises, we are compelled to resort to means which, in effect, are the means used by stronger Governments, our experiment is a failure. If we are constrained to call up, invoke, and put in exercise in any one department of the Government—it is immaterial in what department of the Government—more of power, more of force than the Constitution provides, or than is limited by that Constitution—the moment we do that, or are constrained from our supposed necessities to do it, we acknowledge before the world that our institutions are insufficiently founded, and that we are after all compelled, in the period of trial, to resort to the force, which, they say, is necessary to the existence of a nation, and our experiment is a failure. * * It is vain and idle

in us to war against a part of our people because they have made war upon this Government, if we at the same time have to sap the foundations of the Government by stabbing through the vitals of the Constitution.

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"It will not do to say, that because we need to do this thing, because it is necessary in our judgment, we will do it for that reason. The limitations and prohibitions of power in the Constitution were put there on purpose to prevent our doing such things when we wanted to do them. They were not put in to prevent our doing things we never wanted to do. When it provided, for instance, that you should not pass any attainder bill, that you should not take away any man's property without due process of law, that no man should be punished unless it was on conviction by a jury, that no man should be twice punished for the same offense—prohibitions of this kind are prohibitions to everybody, and they were put in to prevent Congress doing such things when they wanted to do them. They were put in there on purpose to prevent us doing these things when we thought they were necessary. They were not put in to prevent our doing these things when we did not want to do them, and when they were not necessary at all in our judgment."

Let us defeat these destructives before the people. Let us preserve the Constitution, and silence the jubilant shouts of the despots of Europe, the English press, the English Reviewers, and the English speakers, over its supposed destruction, over the supposed failure of the "model Republic."

A last word with Mr. Binney. Tradition tells an anecdote of Washington in his younger days, which is deemed to furnish the highest illustration of true manhood that he ever gave. He was knocked down by a gentleman for an insult he had given. They were parted. Meeting a few days afterwards, and whilst the gentleman was bristling up in expectation of a hard fight, Washington approached him with a smile and an open hand, saying, "Sir, I come to beg your pardon."

Should this suggest to Mr. Binney the propriety of an *amende*

towards his conservative countrymen, whatever he offers will be worthy of himself—it will not be less than his active aid in maintaining the verity of his own words: "The scope of the Constitution is to protect, defend, and to secure the blessings of liberty, *universally and without exception*, unless an exception is declared in the instrument. The power *ultimæ necessitatis* does not exist in this limited government." What will not that aid be worth if he suffer his heart to be revivified, rejuvenated to its pristine love for the Constitution—the pure loyalty of an old-time patriot? The Constitution is in imminent peril from the war that fanatics are waging for its destruction. It is even in greater peril than the Union. Let us not, in solicitude for the lesser, overlook the greater, the more important danger. We of the profession, the appointed and sworn defenders of the Constitution, should stint no peaceful effort for its preservation. If destroyed now, there can be no rational expectation of restoration. Its death will be without redemption or resurrection; "no Promethean heat can its light resume." Like violated chastity, after repeated unresisted, unpunished violations of the Constitution, its purity, its loveableness, its sanctity, its claim to affectionate, willing obedience, will be all gone, and gone forever, without even the possibility of restoration. Shame, shame, a thousand shames upon us, if we permit its destruction without manful resistance! Those of us who have "fallen into the sear and yellow leaf" will go on through the remnant of our days in despondful mourning to unhonored graves, repeating the despairing sigh of the broken-hearted Roman patriot whilst viewing the results of dictatorial power: "*Alas! liberty, thou art but an empty name!*" Younger men may live in repentance "beneath the legs" of some "huge Colossus" of tyranny, amidst the agony of national trials, to learn the value of that *liberty* they ignominiously suffered to be destroyed.